

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Federal-State Joint Board on)	CC Docket No. 96-45
Universal Service)	
)	DA 04-2191
American Cellular Corporation Petition for)	
Agreement in Redefining the Service Area)	
Requirement for Certain Rural Telephone)	
Company Study Areas in the State of)	
Wisconsin)	

**COMMENTS OF THE INCUMBENT LOCAL EXCHANGE CARRIERS
DIVISION OF THE WISCONSIN STATE
TELECOMMUNICATIONS ASSOCIATION**

The Incumbent Local Exchange Carriers Division of the Wisconsin State Telecommunications Association (ILEC-WSTA) is one of the three divisions within the Wisconsin State Telecommunications Association. It is comprised of all 83 Incumbent Local Exchange Carriers (ILEC) that operate in the state of Wisconsin. ILEC-WSTA submits these Comments in response to the Federal Communications Commission's ("Commission") Wireline Competition Bureau *Public Notice*¹ and pursuant to the Commission's rules.² All of the rural telephone companies whose service areas are proposed to be redefined by the Public Service Commission of Wisconsin (PSCW) are members of the ILEC-WSTA.³

¹ *Public Notice*, CC Docket No. 96-45, DA 04-2191 (rel. July 21, 2004) seeking comments on American Cellular's Petition to Redefine Rural Telephone Company Service Areas in the State of Wisconsin.

² 47 C.F.R. §§1.415 and 1.419.

³ Those rural telephone companies are: Amery Telcom Inc., Amherst Tel. Co., Baldwin Telecom, Central State Tel. Co. (TDS), CenturyTel of Central Wisconsin, CenturyTel of Midwest Wisconsin – Thorp, CenturyTel of Northern Wisconsin, CenturyTel of Northwest Wisconsin, CenturyTel of the Midwest – Kendall, CenturyTel of the Midwest Wisconsin Northwest, CenturyTel of Midwest Wisconsin - Cencom, CenturyTel of Midwest Wisconsin – Wayside, Chequamegon Telephone Cooperative, Chibardum

COMMENTS

I. INTRODUCTION

American Cellular (“Petitioner”) petitioned the PSCW for ETC designation in 45 rural telephone company’s service areas and requested redefinition of the study areas of 20 of those companies. The PSCW conducted a minimal process allowing one round of comments and denying requests for a hearing. At the conclusion of that process, the PSCW with little record and without consideration of recent Commission decisions and Joint-Board Recommendations conditionally approved the redefinition of the study areas of those 20 companies including disaggregation of 14 rural telephone companies below the wire center level.⁴ The request before the Commission is the Redefinition of the Service Area Requirement for the Rural Telephone Company’s Study Areas.

Petitioner’s application to the PSCW stated that Spring Valley Tel. Co., a rural telephone company with less than 1,200 access lines, had a study area that the Petitioner served entirely. This is not true. Spring Valley, a single wire center company, provides service in part of St. Croix County where the Petitioner is not licensed to provide service.⁵ However, the PSCW approved unconditional ETC designation for the Spring Valley Tel. Co. service area.

Telephone Cooperative, Citizens Tel. Coop., Clear Lake Telephone Co., Frontier Communications of Wisconsin, Frontier Communications – Mondovi, Frontier Communications – St. Croix, Farmers Independent Tel. Co., Hager City Telecom, Indianhead Tel. Co., Luck Tel. Co., Midway Telephone Company (TDS), Milltown Mutual Tel., Mosinee Tel. Co., Nelson Tel. Coop. Niagara Tel. Co., Northeast Tel. Co., Price County Tel. Co., Rhinelander Tel. Co.s of Rhinelander, Rib Lake, Crandon and Headwater (Citizens), Siren Tel. Co., Spring Valley Tel. Co., Telephone USA of WI, Tri-County Tel. Coop., West Wisconsin Telephone Cooperative, and Wittenberg Tel. Co.

⁴ The 14 companies do not include Spring Valley Tel. Co.

⁵ The attached exhibit is the boundary map for Spring Valley Tel. Co. which is on file with the Public Service Commission of Wisconsin. The upper right hand area of the map identifies a “Eau Galle Twp” and “Cady Twp.” These are townships located in St. Croix County, Wisconsin according to *State of Wisconsin Blue Book 2003-2004* at p. 765.

**II. AMERICAN CELLULAR’S PETITION FOR REDEFINING THE
SERVICE AREA REQUIREMENT FOR RURAL TELEPHONE
COMPANIES STUDY AREAS SHOULD BE DENIED.**

Redefining service areas for 20 rural telephone companies in Wisconsin to allow the Petitioner to receive Universal Service Funds (“USF”) while only serving the areas it desires is not an appropriate use of USF. Allowing Competitive Eligible Telecommunications Carriers (CETC) to pick and choose areas they desire provides little incentive for them to serve all rural areas, including high cost areas. Redefinition enables a CETCs to avoid serving areas it *prefers to not serve*.

Many of rural telephone companies that will be affected by a decision granting the of the Petitioner’s Petition for Redefinition are very small: Two have less than 2,000 access lines; three between 2,000 and 5,000; four between 5,000 and 7,500 and one between 7,500 and 10,000. In the *Virginia Cellular Order* and *Highland Cellular Order* the Commission affirmed that redefinition of a rural telephone’s service area should take into account concerns of the Joint Board including recognizing the administrative burden of requiring rural telephone companies to calculate costs at something other than the study area level.⁶ There is little benefit and substantial cost for disaggregating companies this small. It will be an administrative burden for companies this small to prepared expensive cost studies and possibly seek disaggregation within their tiny service areas. In the *Highland Cellular Order* the Commission ruled, “*We therefore reject arguments that*

⁶ *Virginia Cellular, LLC, Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia*, 19 FCC Rcd 1563 at ¶ 41 (“*Virginia Cellular Order*”). *Federal-State Joint Board on Universal Service, Highland Cellular, Inc. Petition for Designation as an Eligible Telecommunications Carrier for the Commonwealth of Virginia*, CC Docket No. 96-45, Memorandum Opinion and Order, FCC 04-37 (rel. April 2, 2004) ¶ 38 (“*Highland Cellular Order*”).

incumbents can, in every instance, protect against creamskimming by disaggregating high-cost support to the higher-cost portions of the incumbent's study area."⁷ This is counter to the PSCW's generalized finding that "*In the Matter of Multi-Association Group (MAG) Plan*, FCC 01-157 (released 5/23/01), par. 147...the concerns about 'cherry-picking' and 'cream skimming' are largely moot."⁸ For these small rural telephone companies the administrative burden is substantial.

The PSCW in granting the conditional approval for redefinition of the rural telephone companies' service areas, did not consider recent Commission's decisions or the Joint Board's recommendations concerning such redefinition. The Commission in its Notice of Proposed Rulemaking on the recently released Recommended Decision of the Federal-State Joint Board on Universal Service (Joint Board) specifically addressed the ETC designation process, which includes redefinition.⁹ The Joint Board's proposals would promote a "**rigorous ETC designation process**"(Emphasis added) and "should improve the long-term sustainability of the universal service fund, as only fully qualified carriers that are capable of, and committed to, providing universal service would be eligible to receive support."¹⁰ They would ensure that each designated ETC is "prepared to serve all customers within a designated service area" and is "willing to be the sole ETC should other ETCs withdraw from the market."¹¹

The *Recommended Decision* stated, "... we encourage the states and the Commission to **conduct a rigorous and fact-intensive analysis** of requests for service

⁷ *Highland Cellular Order* ¶ 32.

⁸ *PSCW Final Order* p. 11

⁹ Notice of Proposed Rulemaking, *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, FCC 04-127 (rel. June 8, 2004)(Notice); (NPRM), *Federal-State Joint Board on Universal Service Seeks Comment on Certain of The Commission's Rules Relating to High-Cost Universal Support and the ETC Designation Process*, CC Docket No. 96-45 FCC 04J-1 (rel. Feb. 27, 2004)(Recommended Decision).

¹⁰ Recommended Decision ¶¶ 2,9.

¹¹ *Id.* ¶ 11.

area redefinition” and that, “These procedures establish a presumption that a rural carrier’s study area should be the service area for a new ETC...” and “In making this determination, the **states and Commission place the burden of proof upon the ETC applicant.**” (Emphasis added)¹²

In the *Recommended Decision* the Joint Board said,

“...we believe that a *specific, fact-intensive inquiry* is the appropriate way to analyze the public interest when evaluating ETC applications. For example, *some commissions have cited generalized benefits of competition when evaluating ETC applications. While this may be appropriate, we do not believe that such an analysis is sufficient by itself.* Section 214(e)(2) requires states to undertake a *fact-intensive analysis* to ensure that the designation of any additional ETCs will promote the goals set forth in section 254 of the Act in the affected area.”(emphasis added)¹³

The Commission in the *Virginia Cellular Order* endorsed the *Recommended Decision* by saying that a decision regarding ETC designation in rural study areas is a **fact-specific exercise.**¹⁴

The PSCW did not conduct a “rigorous and fact-intensive inquiry.” Without a hearing the PSCW granted conditional approval for the redefinition of service areas for 20 rural telephone companies. It denied none. The entire process before the PSCW was the filing of the Petition by the Petitioner and one opportunity for comments. A request for a hearing was denied. The Order does not show that the Petition met its burden of proof.

The PSCW’s only discussion of the competitive benefits of granting ETC designation and redefining the service areas was the conclusionary sentence, “The Commission finds that designating ACC as an ETC in areas served by rural companies

¹² *Id.* ¶ 55.

¹³ *Id.* ¶ 12.

¹⁴ *Virginia Cellular Order* ¶ 28.

will increase competition in those areas and, so, will increase consumer choice.”¹⁵ This is not sufficient.

The *Universal Service Order*, “encouraged states to determine whether rural service areas should consist of only the contiguous portions of an ILEC’s study area.”¹⁶ This was due to the concern that study areas that are not contiguous may be too large for a competing carrier to serve. In the *PSCW Final Decision* the PSCW endorsed redefining service areas of all the rural telephone companies, even those rural companies that only had a few wire centers all of which were contiguous.¹⁷ It would be simple for the Petitioner to serve all of those wire centers through roaming. They can be served easily by the Petitioner by using facilities or services of other carriers.

Approval of redefining of service areas in some of the rural telephone companies’ study areas will result in cream skimming. The Commission ruled in the *Virginia Cellular Order*, “Rural creamskimming occurs when competitors seek to serve only the low-cost, high revenue customers in a rural telephone company’s study area.”¹⁸ The Commission stated it would evaluate the population density of each affected wire center and the potential effect a redefinition might have to significantly undermine the rural telephone company’s ability to serve its entire service area.¹⁹

The PSCW did not address the population density of the wire centers for the rural telephone companies in *PSCW Final Order* approving conditional redefinition. Such

¹⁵ *Application of American Cellular Corporation for Designation as an Eligible Telecommunications Carrier in Wisconsin*, Public Service Commission of Wisconsin Docket No. 8206-TI-100 p. 8 (June 18, 2004) (“PSCW Final Decision”)(attached to Petition as Exhibit A).

¹⁶ *Federal-State Joint Board on Universal Service*, Report and Order, CC Docket No. 96-45, 12 FCC Rcd 8776, ¶189 (1997) (Universal Service Order).

¹⁷ Of the 21 rural telephone companies, including Spring Valley, that small contiguous wire centers three have one wire center, one has two, two have three, two have four, one has five and one has six.

¹⁸ *Id.* at p. 1578, ¶ 32.

¹⁹ *Id.* at p. 1578-80, ¶ 34-35.

redefining may result in “cream-skimming.” I do not have the population density for the rural telephone companies, but there are other facts that indicate some low-cost wire centers are being included while some high-cost wire centers are excluded.

For Amery Telecom the average number of access lines per square mile for the included wire centers is 32.5, while the wire center that is being petitioned to be partially excluded has only 15.4 access lines per square mile. Another example is Nelson Telephone Cooperative. The only city in this small coop’s service area is Durand with a population of 1,965. It is in the area that the Petitioner wants ETC designation. The only village in Nelson’s service area is Nelson with a population of 395.²⁰ This is an area that the Petitioner does not hold a license and does not desire ETC designation. Other rural telephone companies like Mosinee and Clear Lake have their city and village, respectively, in the area to be in the Petitioner’s service area, but some of their distance, probably high-cost, rural areas would be excluded.

The *Highland Cellular Order* provides an insight into the concerns of the Commission in disaggregating rural telecommunications areas into service areas that are too small. The Commission’s reasons for a minimum geographic area for disaggregating as the wire center applies equally to many rural telephone companies with more than one wire center.

*A rural telephone company’s wire center is an appropriate **minimum** geographic areas for ETC designation because rural carrier wire centers typically correspond with county and/or town lines. We believe that requiring a competitive ETC to serve entire communities will make it less likely that the competitor will relinquish its ETC designation at a later date. Because consumers in rural areas tend to have fewer competitive alternatives than consumers in urban areas, such consumers are more vulnerable to carriers relinquishing ETC designation. (Emphasis added)*²¹

²⁰ *State of Wisconsin Blue Book 2003-2004* at pp. 775 & 763.

²¹ *Highland Cellular Order*.

Many small rural telephone companies serve only one community, but have more than one wire center. In such areas rural residents generally shop in the same stores, attend the same churches and schools, share the same social and recreational facilities. A small rural telephone company is comprised of more than one wire center for a variety of reasons. Often the reason that secondary wire centers are establish is the distance from the primary wire center. It is logical that the appropriate service area for such rural telephone companies is its community.

One example is Amery Telecom. The community is Amery and that is the primary wire center. The Amery wire center has 6,000 access lines. The other two have about 1,000 and 450. However, all three wire centers serve one community.

III. REDEFINING SMALL RURAL CARRIERS' STUDY AREAS TO REQUIRE SUB-WIRE CENTER DISAGGREGATION SHOULD BE DENIED.

The Petitioner applied to the Public Service Commission of Wisconsin to grant Conditional Redefinition of the Service Area Requirement and ETC Designation in the Study Areas of 20²² Rural Telephone Companies in Wisconsin. For 14 rural telephone companies in the latter category, the Petitioner is requesting sub-wire center disaggregation (It is unclear what action the Petitioner desires regarding Spring Valley Telephone Co.).²³ The Commission concluded in the *Highland Cellular Order* that

²² This number does not include Spring Valley Telephone Co.

²³ Those rural telephone companies are: Amery Telcom Inc., Amherst Tel. Co., Baldwin Telecom, Central State Tel. Co. (TDS), CenturyTel of Central Wisconsin, CenturyTel of Northwest Wisconsin, Clear Lake Telephone Co., Frontier Communications – Mondovi, Frontier Communications – St. Croix, Mosinee Tel. Co., Nelson Tel.Coop., Northeast Tel. Co., Tri-County Tel. Coop. and West Wisconsin Telephone Cooperative.

designating a carrier as an ETC for a portion of a rural telephone company's wire center would be inconsistent with the public interest.²⁴

The Commission acknowledged that the Wireline Competition Bureau had previously designated a wireless provider an ETC for a portion of a rural telephone company's wire center. In the *Highland Cellular Order* the Commission reversed that policy. It went on to determine that the appropriate minimum geographic area for ETC designation is the rural telephone company's wire center.²⁵

The PSCW in its Order did not provide any reason for not following the precedent establish by the Commission in the *Highland Cellular Order*.

IV. CONCLUSION

The ILEC-WSTA requests the Commission:

- a. Reject the Petition because no specific fact-intensive inquiry was performed by the state commission and for the other reasons set forth in these comments;
- b. Reject the request to redefine the service areas of the rural telephone companies study areas into sub-wire centers ETC areas because the *Highland Cellular Order* and *Recommended Decision* criteria was not used and for the other reasons set forth in these Comments;
- c. In the alternative delay consideration of the Petition until after the Commission has resolved the issues in the pending Joint Board Recommended Decision; and

²⁴ *Federal-State Joint Board on Universal Service, Highland Cellular, Inc. Petition for Designation as an Eligible Telecommunications Carrier for the Commonwealth of Virginia*, CC Docket No. 96-45, Memorandum Opinion and Order, FCC 04-37 (rel. April 2, 2004)(*Highland Cellular Order*).

²⁵ *Id.*

- d. Disallow the Finding of the Public Service Commission of Wisconsin that Spring Valley Telephone Company is an area where an unconditional ETC designation is allowed.

Respectfully submitted,
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